

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 04-80391

DEWAYNE BOYD,

Defendant.

**OPINION AND ORDER DENYING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

On December 17, 2010, Defendant DeWayne Boyd filed a "Motion for Summary Judgment Against the United States of America." The motion is premised upon the late filing of the Government's response to Defendant's motion under 28 U.S.C. § 2255. Under Federal Rule of Civil Procedure 56, summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The instant motion fails to provide any independent arguments for summary judgment, apart from the Government's failure to timely respond after an extension was granted by the court. The motion for summary judgment will be denied, therefore, as it shows neither that there is no genuine issue of material fact nor that Defendant is entitled to judgement as a matter of law.

Additionally, to the extent that Defendant's motion seeks default judgment under Rule 55, it must be denied as default judgment based upon failure to respond is inappropriate in response to habeas motions under § 2255. Fed. R. Civ. P. 55(a). Although the Sixth Circuit has not addressed the issue of granting summary judgment

on federal habeas motions under 28 U.S.C. § 2255, it has stated that “[t]he burden to show that he is in custody in violation of the Constitution of the United States is on the prisoner.” *Allen v. Perini*, 424 F.2d 134, 138 (6th Cir. 1970). In a case involving a habeas petition brought pursuant to 28 U.S.C. § 2254, the *Allen* court further determined that Rule 55(a) is inapplicable to habeas cases. *Id.* Even if Rule 55 applies to § 2255 motions, Defendant still cannot obtain default judgment against the United States because he has not “establishe[d] a claim or right to relief by evidence that satisfies the court.” Fed. R. Civ. P. 55(d); see *United States v. Collins*, 172 F.App’x 242, 243 (10th Cir. 2006). Accordingly,

IT IS ORDERED that Defendant’s motion for summary judgment [Dkt. # 120] is DENIED.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: January 31, 2011

I hereby certify that a copy of the foregoing document was mailed to petitioner Dewayne Boyd, #32719039, Federal Correctional Institution, FCI Fort Dix, P.O. Box 2000, Fort Dix, NJ 08640, on this date, January 31, 2011 by electronic and/or ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522